PRIOR ART

Although the examiner indicates that claims 1-31 are free from prior art, the rejection of claims 1-31 are based on inconsistencies in the recitations and limitations of claims within the claim 1-31 group and certain vagaries that are contained therein. However, since the examiner has cited USPN 5,916,928 and USPN 5,065,752 asserting that the product as claimed can be made by other polymer-based foam fabrication methods such as those described in USPN 5,916,928 and USPN 5,065,752, I would like to reply to the examiner's assertions.

The use of the term 'foam', in and of itself, does not ennoble the patents by Sessions, et al. to constitute prior art because the instant application of Scherr uses the same term. Whether an invention is patentable over the prior art, depends upon whether the subject matter of the claim, taken as a whole, would have been obvious to one of ordinary skill in the art at the time the claimed invention was made (Application of Yettito, 1960, F.2d 953, 47 CCPA 792) (emphasis added).

The test of an invention where old elements are used is whether those elements are used in a manner different from the previously known use in such a way that the alleged invention would not have been obvious to one skilled in the art, and an invention under such test is a question of fact. (Maytag Co. *v.* Murray Corp. of America, C.A.Mich. 1963, 318 F.2d 79).

The basis composition that is used in U.S. Patent number 5,065,752 which is made into a foam is an isocyanate-capped polyether prepolymer (claim 1). The foaming is achieved by an adjuvant, which adjuvant is selected from a group consisting of ethanol,

isopropyl alcohol, propylene glycol, polyethylene glycol, polypropylene glycol, glycerine, 1,2,4-butanetriol, trimethylolpropane, sorbitol, or pentaerythritol (claim 2).

The basic components utilized in USPN 5,916,928 to effect a foam is a polyurethane prepolymer and water (claims 1 and 10). The prepolymer chosen has to be capable of foaming in an aqueous system, but they should not dissolve in an aqueous system (Col. 3, line 59-64).

The instant application before us utilizes pectin and reactant chemical agents to cause the pectin to become aqueous-insoluble in which state it is foamed by using an effervescent compound which compound is made effervescent in the presence of an aqueous-soluble acid. It is not possible in the instant application to produce the foam if the reagents necessary for its production were insoluble in an aqueous system as is clearly mandatory in USPN 5,916,928. Further, the active ingredient in the instant application, pectin, is on the G.R.A.S. list in order to ensure a high degree of safety and lack of inhibition of cellular regeneration in a wound or burn; the polyurethane foam in USPN 5,916,928 has no chemical resemblance to the novel preparation of a pectin foamed medical dressing which:

A. Contains a built-in backing simultaneously applied with the production of the dressing which obviates the necessity of medical personnel of having to purchase, stock, and apply two separate sterile dressings, one of which would be the backing upon which the taping is adhered to affix it to the patient (see claims 78 and 83 in the amended claims).

B. A delivery system for a wide variety of medicinal products that are feasible to be placed into a foamed pectin dressing as described by Scherr in the instant application (see claims 78 and 86 of the amended claims).

C. The capability for other pectin foamed moieties to be utilized within the scope of the invention such as silver pectate, copper pectate, zinc pectate, and others (see claims 84 and 85 of the amended claims).

Under Section 102 of Title 35, the question of whether the process or article under examination is compared against each alleged prior use individually, or as practiced under Section 103, the question of whether the claim is obvious is determined with reference to the prior art as a whole. (Jack Winter, Inc. v. Koratron Co., Inc., D.C. Cal. 1974 375 F.Supp. 1, supplemented 409 F.Supp. 1019).

The applicant is very well acquainted with the patents and products described in USPN 5,065,752 and 5,916,928. The applicant has been engaged in the fields of chemistry and microbiology for the past 62 years and applicant is familiar with the technology and the state of the art relating to the use of dressings for medical purposes in which field applicant has been engaged for the past 42 years. I waive the need to submit a declaration under 37 C.F.R. §1.132, but for the benefit of the examiner I have appended hereto a copy of applicant's *curriculum vitae*.

Section 35 § 103, PT II, CH. 10, PATENTABILITY OF INVENTIONS is intended to articulate a standard of invention somewhat less strict than that implied by reference to flash of creative genius but also to remind that patentability should be judged against state of art at time invention was made without benefit of hindsight predicated on subsequent art. (Frantz Mfg. Co. v. Phenix Mfg. Co., C.A. Wis.1972, 457 F.2d 314). The

intent of this section also is not that either Examiner, Board of Appeals, or Court of Customs and Patent Appeals [now Court of Appeals for the Federal Circuit] should substitute their own speculations for factual knowledge of those skilled in the art. (Application of Katzschmann, 1965, 347 F.2d 620, 52 CCPA 1497).

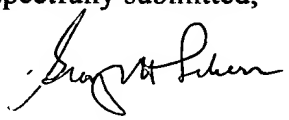
OATH/DECLARATIONS

Reviewer's comments asserting the inadequacy of applicant's oath are noted. Applicant respectfully submits that an oath/declaration identifying the application by application number and filing date is not feasible at the time that the application is submitted to the patent office, since the application number and filing date are confirmed after the application with an appropriate oath has been filed. However, an amended declaration and oath are appended hereto and replace the declaration and oath filed with the instant application.

PAYMENT FORM

A Credit Card Payment Form is appended hereto and made a part of applicant's response.

Respectfully submitted,



George H. Scherr, Ph.D.

GHS/jj

Application No.: 09/818,928
Filing Date: March 28, 2001
Inventor: George H. Scherr
Examiner: Cybille Delacroix-Muirheid
Art Unit: 1614
Title: Cellulosic Foam Compositions

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**AMENDED CLAIMS 78-107**

78. A process for making an aqueous-insoluble cation cross-linked pectin sponge or foam product to be utilized in the preparation of wound dressings or surgical products comprising the steps of:

(I) making an aqueous solution of an aqueous-soluble pectin composition in which the pectin has a degree of esterification of less than 50% and a degree of amidation of less than 50%;

(II) while allowing the total composition of (I) to be mixed, adding a cation metal ion salt capable of complexing the aqueous-soluble pectin to form an aqueous-insoluble pectin hydrogel;

(III) adding to the mixture of (II), a plasticizer, a surface active agent, sodium tetraborate, ammonium hydroxide, and a suitable medicinal agent;

(IV) while continuing to mix the entire composition (III), adding an aqueous-soluble effervescent compound capable of effervescence upon reaction with an aqueous-soluble acid;

(V) adding to the composition with continued mixing (IV) an aqueous-soluble acid;

(VI) pouring said composite mixture of (V) onto a fibrous cloth contained in or on a tray, which fibrous cloth will become affixed to the foamed pectin composition as a backing after the aqueous component of said composite mixture has evaporated.

79. The process of claim 78 wherein the effervescent compound is selected from a group consisting of the alkali metal carbonates.

80. The process of claim 79 wherein said effervescent compound is sodium carbonate.

81. The process of claim 78 wherein said effervescent compound is sodium bicarbonate.

82. The process of claim 78 wherein said water soluble acid is selected from the group consisting of acetic, lactic, malic, gluconic, hydrochloric, and ascorbic acids.

83. The process of claim 78 in which the fibrous cloth is selected from cloths prepared from cotton, polyester, wool, nylon, rayon, or mixtures thereof.

84. The process of claim 78 wherein said cation metal ion is derived from salts selected from the group consisting of earth metal salts, alkali metal salts, transition metal salts, and mixtures thereof.

85. The process of claim 84 wherein said cation metal ion is selected from the group consisting of calcium, barium, copper, magnesium, iron, zinc, aluminum, manganese, silver, strontium, and mixtures thereof.

86. The process of claim 78 wherein said medicament is selected from the group consisting of collagen, maltodextrin, antibiotics, antibacterial agents, anti-inflammatory agents, ascorbic acid, amino acids, and mixtures thereof.

87. The process of claim 78 wherein said plasticizer is selected from a group consisting of glycerin, propylene glycol, ethylene glycol, and polyethylene glycol or mixtures thereof.

88. The process of claim 78 wherein said surface active agent is selected from a group consisting of polyoxyethylene sorbitan monolaurate, polyoxyethylene sorbitan monopalmitate, polyoxyethylene sorbitan monooleate, polyoxyethylene sorbitan trioleate, polyoxyethylene-polyoxypropylene block polymer, or a mixture thereof.

89. The process of claim 78 wherein the cation metal ion salt complexing the aqueous-soluble pectin is calcium sulphate.

90. The process of claim 78 where in the cation metal ion salt complexing the aqueous-soluble pectin is calcium chloride.

91. The process of claim 78 wherein non-pectin polysaccharides are added to the pectin composition.

92. The process of claim 91 wherein the non-pectin polysaccharide is selected from the group consisting of carboxymethylcellulose, carboxymethyl ethyl cellulose, hyaluronic acid, carrageenan, alginic acid, sodium alginate, and gellan gum.

93. An aqueous-insoluble pectin sponge or foam wound dressing prepared by the method of claim 78.

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94. An aqueous-insoluble pectin sponge or foam wound dressing prepared by the method of claim 79.

95. An aqueous-insoluble pectin sponge or foam wound dressing prepared by the method of claim 80.

96. An aqueous-insoluble alginate sponge or foam wound dressing prepared by the method of claim 81.

97. A aqueous-insoluble alginate sponge or foam wound dressing prepared by the method of claim 82.

98. An aqueous-insoluble pectin sponge or foam wound dressing prepared by the method of claim 83.

99. An aqueous-insoluble pectin sponge or foam wound dressing prepared by the method of claim 84.

100. An aqueous-insoluble pectin sponge or foam wound dressing prepared by the method of claim 85.

101. An aqueous-insoluble pectin sponge or foam wound dressing prepared by the method of claim 86.

102. An aqueous-insoluble pectin sponge or foam wound dressing prepared by the method of claim 87.

103. An aqueous-insoluble pectin sponge or foam wound dressing prepared by the method of claim 88.

104. An aqueous-insoluble pectin sponge or foam wound dressing prepared by the method of claim 89.

105. An aqueous-insoluble pectin sponge or foam wound dressing prepared by the method of claim 90.

106. An aqueous-insoluble pectin sponge or foam wound dressing prepared by the method of claim 91.

107. An aqueous-insoluble pectin sponge or foam wound dressing prepared by the method of claim 92.